

ORIGINAL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(PCT)

In Re Application of:

MAX FRIEDHEIM

International Application

No.: PCT/US2005/008705

I. A. FILING DATE: 03/15/2005

PRIORITY DATE: 03/15/2004

U.S. APPLICATION No.: 60/553,576

FOR: IMPROVED HIGHLY SUPER-
HEATED VAPOR GENERATOR
SYSTEM AND METHOD

PETITION TO THE DIRECTOR
FOR VACATING AND
WITHDRAWING ERRONEOUS
PURPORTED NOTIFICATION OF
ABANDONMENT; EXHIBITS;
DECLARATION OF APPLICANT'S
ATTORNEY IN SUPPORT
OF PETITION [37 CFR 1.181]

I certify that this correspondence is being
deposited with the U.S. Postal Service as first class
mail in an envelope addressed to: Hon. Commissioner of
Patents
PCT OFFICE OF LEGAL ADMINISTRATION
P.O. BOX 1450
MAIL STOP PCT
ALEXANDRIA, VA 22313-1450

7/8/05 By *Linda Enryung*

To: Director of Patents
PCT OFFICE OF LEGAL ADMINISTRATION
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
MAIL STOP PCT

Sir:

This is a petition to vacate an erroneously issued purported Notification of Abandonment mailed 06/13/2005 in the within PCT Patent Application, a true, correct, and complete copy of which erroneous Notification of Abandonment is annexed hereto and incorporated by reference herein as Exhibit 1.

I. INTRODUCTION AND STATEMENT OF FACTS.

As shown in Exhibit 2 (a true, complete and correct, copy of a paper mailed 18 May 2005 from the International Bureau concerning the subject patent application entitled "Important Notification"), the instant International patent application was filed 15 March 2005 with United States as Examining Office. The priority date claimed was the filing date of the U.S. patent application, 15 March 2004. The U.S. Serial No. was 60/553,576.

As shown on page 2 of Exhibit 2, the applicable time limit for entering the national phase will be thirty (30) months from the priority date. Accordingly, the time limit for entering into the national phase for the subject international patent application is thirty (30) months from 15 March 2004 namely, 15 September 2006.

As shown in Exhibit 1, however, an erroneous purported "Notification of Abandonment" for alleged failure to "provide the full U.S. Basic National Fee by 30 Months" was mailed on 06/13/2005. On Exhibit 1, the U.S. Serial No. was erroneously stated as 10/528,084, the correct U.S. Serial No. being - - as stated above - - 60/553,576. In addition, in Exhibit 1 the International Application No. is erroneously stated to be PCT/US 05/08705, whereas the correct International Application No. is PCT/US 2005/008705.

As stated in the appended Declaration of Joseph R. Evanns, Applicant's attorney, five (5) telephone calls were made to PCT personnel in order to resolve the matter without the necessity of a formal petition. Three of these telephone calls were made to the signatory of Exhibit 1, Patricia A. Booker, whose telephone No. is (703) 308-9140, Ext. 204, who never picked up the telephone but always was on voicemail promising to return the call within one (1) business day. No return calls, however, were received at any time from Patricia Booker though three (3) telephone calls were made and messages were left urgently requesting to discuss vacating the erroneous notification of abandonment.

Two (2) other telephone calls were made to Patricia Booker's supervisor, Kathy Short, at telephone No. (703) 308-9140, Ext. 220. Like Ms. Booker, Ms. Short never did pick up the telephone but provided a voicemail message promising to return the call; however, no return call was ever received though urgent messages were left twice to the effect that this matter must be immediately resolved by vacating the erroneous Notification of Abandonment.

In addition, there were telephone calls to the PCT Help Line where Applicant's attorney was advised to file this Petition rather than await a response from Ms. Booker and/or Ms. Short.

Consequently, the Instant Petition is being filed for vacating the erroneous purported Notice of Notification of Abandonment.

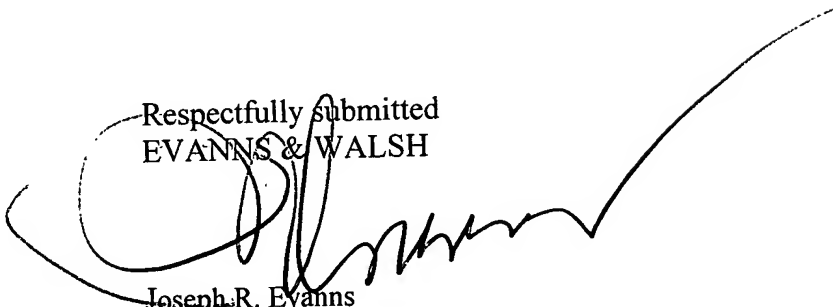
II. POINTS AND AUTHORITIES.

The applicable time limit for entering the national phase is 30 months from the priority date. See Exhibit 2, Important Notification, page 2. The priority date being 15 March 2004, the deadline for entering into the national phase for the instant PCT application is 15 September 2006. To compound the erroneous nature of the "Notice of Abandonment," both the U.S. Serial No. and the International Serial No. were incorrectly stated.

III. CONCLUSION.

On the basis of the foregoing it is respectfully submitted that the erroneous purported Notification of Abandonment mailed 06/13/2005, a true copy of which is annexed hereto and incorporated by reference herein as Exhibit 1, be rescinded and vacated and removed from the file of this case.

Respectfully submitted
EVANNS & WALSH


Joseph R. Evanns
Reg. No. 25, 676
Attorney for Applicant

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UNITED STATES PATENT AND TRADEMARK OFFICE

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 United States Patent and Trademark Office
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U.S. APPLICATION NUMBER NO.

10/528,084

FIRST NAMED APPLICANT

Max Friedheim

ATTY. DOCKET NO.

1776-013 (PCT)

INTERNATIONAL APPLICATION NO.

PCT/US05/08705

I.A. FILING DATE

PRIORITY DATE

03/15/2005

Joseph R Evanns
 Evanns & Walsh
 119 N San Vicente Blvd
 Suite 206
 Beverly Hills, CA 90211

CONFIRMATION NO. 2284

371
 ABANDONMENT/TERMINATION
 LETTER

OC000000016255489

OC000000016255489

Date Mailed: 06/13/2005

NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Applicant has failed to provide the full U.S. Basic National Fee by 30 months (37 CFR 1.495(b)(2)).

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

PATRICIA A BOOKER

Telephone: (703) 308-9140 EXT 204

PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/909 (371 Abandonment Notice)

EXHIBIT 1

PATENT COOPERATION TREATY

PCT

NOTIFICATION OF RECEIPT OF
RECORD COPY

(PCT Rule 24.2(a))

From the INTERNATIONAL BUREAU

To:

EVANNS, Joseph, R.
Evanns & Walsh
119 North San Vicente Boulevard
Beverly Hills, CA 90211
United States of America

Date of mailing (day/month/year) 18 May 2005 (18.05.2005)	IMPORTANT NOTIFICATION
Applicant's or agent's file reference 1776-013(PC)	International application No. PCT/US2005/008705

The applicant is hereby notified that the International Bureau has received the record copy of the international application as detailed below.

Name(s) of the applicant(s) and State(s) for which they are applicants:

FRIEDHEIM, Max(all designated States)

International filing date : 15 March 2005 (15.03.2005)

Priority date(s) claimed : 15 March 2004 (15.03.2004)

Date of receipt of the record copy
by the International Bureau : 13 April 2005 (13.04.2005)

List of designated Offices :

AP : BW, GH, GM, KE, LS, MW, MZ, NA, SD, SL, SZ, TZ, UG, ZM, ZW

EA : AM, AZ, BY, KG, KZ, MD, RU, TJ, TM

EP : AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, IE, IS, IT, LT, LU, MC, NL, PL, PT, RO, SE,
SI, SK, TR

OA : BF, BJ, CF, CG, CI, CM, GA, GN, GQ, GW, ML, MR, NE, SN, TD, TG

National : AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM,
DZ, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS,
LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK,
SL, SM, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

ATTENTION

The applicant should carefully check the data appearing in this Notification. In case of any discrepancy between these data and the indications in the international application, the applicant should immediately inform the International Bureau.

In addition, the applicant's attention is drawn to the information contained in the Annex, relating to:

- time limits for entry into the national phase - see updated important information (as of April 2002)
- requirements regarding priority documents (if applicable)

A copy of this Notification is being sent to the receiving Office and to the International Searching Authority.

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer: Anne KARKACHI (Fax 338.87.20)
Facsimile No. (41-22) 338.87.20	Telephone No. (41-22) 338 9656

Form PCT/IB/301 (January 2004)

006692190

EXHIBIT 2

INFORMATION ON TIME LIMITS FOR ENTERING THE NATIONAL PHASE

The applicant is reminded that the "national phase" must be entered before each of the designated Offices indicated on the cover sheet of this Notification by paying national fees and furnishing translations, as prescribed by Articles 22 and 39 and the applicable national laws. In addition, the applicant may also have to comply with other special requirements applicable in certain Offices. It is the applicant's responsibility to ensure the necessary steps to enter the national phase are taken in a timely fashion. Most Offices do not issue reminders to applicants in connection with the entry into the national phase.

The applicable time limit for entering the national phase will, subject to what is said in the following paragraph, be **30 MONTHS** from the priority date, not only in respect of any elected Office if a demand for international preliminary examination is filed before the expiration of 19 months from the priority date (see Article 39(1)), but also in respect of any designated Office, in the absence of filing of such demand, where Article 22(1) as modified with effect from 1 April 2002 applies in respect of that designated Office. For further details, see PCT Gazette No. 44/2001 of 1 November 2001, pages 19926, 19932 and 19934, as well as the PCT Newsletter, October and November 2001 and February 2002 issues.

In practice, time limits other than the 30-month time limit will continue to apply, for various periods of time, in respect of certain designated or elected Offices. For regular updates on the applicable time limits (20, 21, 30 or 31 months, or other time limit), Office by Office, refer to the PCT Gazette ("Section IV" part published on a weekly basis), to the PCT Newsletter (on a monthly basis) and to the relevant National Chapters in Volume II of the PCT Applicant's Guide (the paper version of which is updated usually twice a year and the Internet version of which is updated usually on a weekly basis). Finally, a cumulative table of all applicable time limits for entering the national phase is available from WIPO's Internet site, via links from various pages the site including those of the Gazette, Newsletter and Guide, at <http://www.wipo.int/pct/en/index.html>.

Information about the requirements for filing a demand for international preliminary examination is set out in the PCT Applicant's Guide, Volume I/A, Chapter IX. Note that only an applicant who is a national or resident of a PCT Contracting State which is bound by Chapter II has the right to file a demand for international preliminary examination (at present, all PCT Contracting States are bound by Chapter II).

REQUIREMENTS REGARDING PRIORITY DOCUMENTS

For applicants who have not yet complied with the requirements regarding priority documents, the following is recalled.

Where the priority of an earlier national, regional or international application is claimed, the applicant must submit a copy of the said earlier application, certified by the authority with which it was filed ("the priority document") to the receiving Office (which will transmit it to the International Bureau) or directly to the International Bureau, before the expiration of 16 months from the priority date, provided that any such priority document may still be submitted to the International Bureau before that date of international publication of the international application, in which case that document will be considered to have been received by the International Bureau on the last day of the 16-month time limit (Rule 17.1(a)).

Where the priority document is issued by the receiving Office, the applicant may, instead of submitting the priority document, request the receiving Office to prepare and transmit the priority document to the International Bureau. Such request must be made before the expiration of the 16-month time limit and may be subjected by the receiving Office to the payment of a fee (Rule 17.1(b)).

If the priority document concerned is not submitted to the International Bureau or if the request to the receiving Office to prepare and transmit the priority document has not been made (and the corresponding fee, if any, paid) within the applicable time limit indicated under the preceding paragraphs, any designated State may disregard the priority claim, provided that no designated Office may disregard the priority claim concerned before giving the applicant an opportunity, upon entry into the national phase, to furnish the priority document within the time limit which is reasonable under the circumstances (Rule 17.1(c)).

Where several priorities are claimed, the priority date to be considered for the purposes of computing the 16-month time limit (and all other PCT time limits) is the filing date of the earliest application whose priority is claimed (Article 2(xi)(b)).

EXHIBIT 2

DECLARATION OF JOSEPH R. EVANNS IN SUPPORT OF APPLICANT'S
PETITION FOR VACATING ERRONEOUS PURPORTED NOTIFICATION OF
ABANDONMENT.

Joseph R. Evanns, hereby declares under penalty of perjury as follows:

1. My name is Joseph R. Evanns. I am an attorney duly licensed to practice before all courts in the State of California, before the United States District Court for the Central District of California, numerous Federal District and Appellate Courts, and before the United States Patent and Trademark Office with Registration No. 25,676. My address is 119 North San Vicente Blvd., Beverly Hills, California 90211. I make this Declaration on personal knowledge and have firsthand familiarity with the contents hereof. If called as a witness, I could and would competently and truthfully testify in accordance herewith. I am Attorney for the Applicant Max Friedheim concerning the instant PCT patent application. I make this Declaration in support of Applicant's petition to the Director to vacate the erroneous purported Notification of Abandonment issued 06/13/2005 herein. (Exhibit 1 annexed to the Petition).
2. On or about June 20, 2005, my office received a document from the United States Patent and Trademark Office in connection with the within PCT patent application entitled "Notification of Abandonment," a true, correct, and

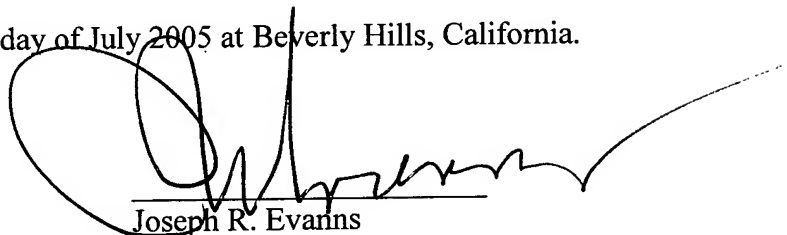
complete copy of which is annexed to the within Petition as Exhibit 1. The purported Notice of Abandonment was erroneous on numerous grounds and was most probably issued as a result of clerical error. As noted in paragraphs 6, 7 hereinbelow, the date to enter into the national phase was wholly off the mark. Also, the U.S. serial No. of the priority application was erroneously stated as 10/528,084, whereas the correct serial No. is 60/553,576. In addition, in Exhibit 1 the instant international application is erroneously stated to be PCT/US 05/08705, whereas the correct international application is PCT/US 2005/008705.

3. Upon receiving the purported Notification of Abandonment of Exhibit 1, I promptly attempted to contact by telephone the person named as the issuer of Exhibit 1 namely Patricia A. Booker at telephone (703) 308-9140, ext. 204. Each time I called the aforesaid number, I heard a voicemail message stating that Patricia Booker was unavailable but would return my call within one business day. I left messages concerning the urgent necessity to vacate the erroneous Notice of Abandonment. Three calls later over a period of a week, no return call had been received.
4. I then learned the identity of the supervisor of Ms. Booker, who turned out to be Kathy Short at telephone No. (703) 308-9140, Ext. 220. I put in two calls to Ms. Short who also did not pick up her telephone, and left two voicemail messages concerning the nature of my calls and the need for immediate action to remove the offending purported Notification of Abandonment from the file. As with Ms. Booker, I have never received a return call from Ms. Short.

5. Finally, on the advice of the PCT Help Line, I have adopted the expedient of filing the within petition to vacate the erroneous purported Notification of Abandonment, which this Declaration supports.
6. The subject PCT patent application was filed 15 March 2005 (see Exhibit 2 annexed to the Petition) claiming a priority date of the earlier filed U.S. application, 15 March 2004.
7. In view of the fact that the time limit for entering the national phase is 30 months from the priority date (as stated on Exhibit 1) , the national phase entry deadline is 15 September 2006.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed under penalty of perjury this 7th day of July 2005 at Beverly Hills, California.



Joseph R. Evans